Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Joint Petition for Rulemaking to Further	)	
Reform the International Settlements Policy	)	IB Docket No.____

JOINT PETITION FOR RULEMAKING OF AT&T INC., SPRINT NEXTEL CORPORATION AND VERIZON

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TABLE OF CONTENTS

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	)	
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AT&T Inc., on behalf of its affiliates ("AT&T"), Sprint Nextel Corporation ("Sprint") and the Verizon 214 Licensees[1] ("Petitioners") submit this Joint Petition for Rulemaking to request the Commission to extend the benefits of market-based traffic termination arrangements to all U.S. international routes by lifting the International Settlements Policy ("ISP") from the small number of remaining routes still subject to this regulation.

INTRODUCTION AND SUMMARY

In response to the rapid growth of competition in the international market in recent years, the Commission has drastically reduced its regulation of U.S. carrier traffic termination arrangements with foreign carriers under the ISP in order to encourage more flexible arrangements and lower rates. As the result of these deregulatory policies, 165 U.S. international routes, accounting for more than 98 percent of U.S.-outbound traffic, are now ISP-exempt. U.S. carriers have negotiated market-based commercial traffic termination arrangements on these routes that have reduced U.S. termination rates far below the Commission's settlement rate

[1] The Verizon 214 Licensees are various subsidiaries of Verizon Communications Inc. ("Verizon") holding international Section 214 authorizations.

benchmarks.[2] The continued application of the ISP to the small number of routes remaining subject to the ISP – accounting for less than 2 percent of total U.S.-outbound international traffic – is no longer necessary to protect the U.S. market against competitive harm. Moreover, retention of the ISP increasingly hinders efforts to negotiate lower rates on the routes that are still subject to this regulation. The Commission should therefore now remove its remaining ISP regulation and allow market-based termination arrangements on all U.S. international routes.

The retention of the ISP on a small number of routes imposes significant difficulties on the negotiation of lower rates on those routes in compliance with the requirements of this regulation. While it has long been recognized that the ISP frequently impedes the negotiation of lower rates, the requirements of the ISP obstruct U.S. carrier rate negotiations to an even greater extent when most U.S. international routes are ISP-exempt. That is because foreign carriers on ISP routes have little or no incentive to agree to pay symmetrical rates in compliance with the ISP when they readily may send their U.S.-bound traffic at much lower market rates through traffic re-origination arrangements offered by third country foreign carriers on ISP-exempt routes.

The protection of the U.S. market against competitive harm, which was the original purpose of the ISP, does not require the retention of this regulation. The prevention of anticompetitive conduct by foreign carriers is addressed in a more targeted manner on ISP-exempt routes by the Commission's competitive safeguards procedures that were established specifically to protect the U.S. market after the removal of the ISP. Further protection can be

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[2] U.S. carriers' average world-wide termination rates were 8.6 cents in 2003. FCC 2003 43.61 Report, Table A1. Petitioners believe, based on their own settlements data, that average U.S. rates continued to decrease in 2004 and 2005.

provided by the Commission's longstanding prohibition on anticompetitive conduct by foreign carriers; rules to improve the application of the prohibition are currently the subject of a Commission inquiry. Finally, the "No Special Concessions" rule continues to apply to all U.S. carrier arrangements with foreign dominant carriers.

The U.S. industry's additional experience with commercial international traffic arrangements since the industry filed comments in the *ISP Reform* proceeding in early 2003, and since the Commission greatly expanded the number of international routes exempted from the ISP in 2004, confirms the benefits of these arrangements in allowing the negotiation of lower rates and more efficient arrangements on both liberalized and non-liberalized routes. Continued pro-competitive developments in the global telecommunications market that are increasingly being felt on all routes also support this further deregulatory step.

For these reasons, the burdens resulting from the continuation of the ISP now far outweigh the benefits of this regulation and Petitioners request the Commission to lift the ISP from the remaining routes still subject to these requirements.

I. REMOVAL OF THE ISP WILL ENCOURAGE LOWER RATES AND MORE FLEXIBLE AND INNOVATIVE ARRANGEMENTS ON ALL INTERNATIONAL ROUTES

The Commission has long recognized the benefits of removing the ISP to encourage the negotiation of more flexible termination arrangements and lower rates, and has exempted the large majority of U.S. international routes from the ISP in recent years to promote this objective. As described below, similar benefits would result from extending this deregulatory policy to all international routes.

A. The Commission Has Removed the ISP on the Large Majority of International Routes to Encourage the Negotiation of Lower Rates

The requirements of the ISP that U.S. carriers must be offered the same accounting rate, receive a proportionate share of return (*i.e.*, U.S.-inbound) traffic, and maintain symmetrical rates for outbound and inbound traffic on each route often impede the negotiation of lower termination rates. The Commission noted in 2004 that the ISP "is not structured to provide an incentive to foreign carriers to lower rates to cost-based levels," and "may in reality hinder the ability of U.S. carriers to negotiate more cost-based settlement rates and efficient terms in their agreements with foreign carriers."[3]

Similarly, the Commission has explained that, under the ISP requirement that negotiated rates are available to all other carriers, "the negotiating carrier has a reduced incentive to negotiate aggressively," because "[n]o matter how aggressively a carrier negotiates, it will be unable to achieve a cost advantage vis-à-vis its competitors under the ISP."[4] Also, "[f]oreign carriers may be reluctant to enter into arrangements with U.S. carriers to terminate traffic at reduced rates if the U.S. carrier is required to file such arrangements publicly."[5]

In order to encourage the negotiation of lower rates and more flexible arrangements, and

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[3] *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶¶ 13, 34 (2004) ("*ISP Reform Order*").

[4] *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 14 FCC Rcd. 7963, ¶ 24 (1999) ("*1999 Settlements Reform Order*"). *See also, e.g., Regulation of International Accounting Rates*, Fourth Report and Order, 11 FCC Rcd. 20063, ¶ 18 (1996) ("The ISP imposes by regulatory fiat an identical international transfer price for every form of commercial relationship involving IMTS. This is a restriction that may limit more efficient alternatives as part of innovative commercial arrangements.")

[5] *Id.*, ¶ 28.

in response to the growth of competition in the global telecommunications market, the Commission has removed requirements for compliance with the ISP from the large majority of U.S. international routes. The Commission began this deregulatory approach in 1997 by authorizing more flexible International Simple Resale ("ISR") arrangements, and by 2004 had approved such arrangements on 91 international routes representing approximately 65 percent of U.S.-outbound traffic.[6] In 1999, the Commission removed the ISP from arrangements with non-dominant foreign carriers and from routes where rates with dominant foreign carriers were below a certain threshold.[7] In 2004, the Commission removed the ISP on all routes approved for ISR and on all benchmark-compliant routes.[8] Under this most recent deregulatory step, the number of U.S. international routes exempt from the ISP increased to 165, accounting for more than 98 percent of all U.S.-outbound traffic.[9]

The Commission emphasized in 2004 that "lifting the ISP on these routes will provide incentive to U.S. carriers to negotiate aggressively with foreign incumbents because U.S. competitors will no longer be required to share the gains of such negotiation with competitors in

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[6] *ISP Reform Order*, ¶ 18. *See also, id.* ¶ 20 (noting the existence of substantial continued rate decreases on ISR-approved routes, which "are effectively operating outside the ISP").

[7] *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements,* Report and Order and Order on Reconsideration, 14 FCC Rcd. 7963, ¶¶ 29, 52 (1999) ("*1999 Settlements Reform Order*")

[8] *ISP Reform Order*, ¶¶ 27, 29.

[9] Public Notice, DA 04-2832, Aug. 31, 2004, *Commission Lifts the International Settlements Policy on Certain Benchmark-Compliant Routes, Seeks Further Comment on Other Routes* (increasing the number of ISP-exempt routes from 96 to 122); Public Notice, DA 04-3518, Nov. 4, 2004, *Additional U.S.-International Routes Exempted from the International Settlements Policy* (increasing the number of ISP-exempt routes from 122 to 162). *See also*, FCC 43.61 2003 report (ISP-exempt routes accounted for 41,787,299,354, or 98.4 percent, of 42,467,248,406 total U.S.-outbound minutes).

the form of identical contracts."[10] U.S. carriers would obtain "the ability to respond rapidly to fluctuations in a competitive market through commercial agreements, which, based on the experience of recent years, should place additional downward pressure on termination rates."[11] The deregulation of international traffic termination arrangements would also benefit competition in the U.S. market "by introducing greater uncertainty about rivals' international termination costs, a significant component of retail costs."[12]

The pro-competitive benefits of these most recent actions by the Commission to deregulate the U.S. international market are already evident. Petitioners' termination rates on most ISP-exempt routes have continued to decrease, and Petitioners also have obtained lower rates on many routes not previously authorized for ISR that are now ISP-exempt. Additionally, by negotiating commercial arrangements on these routes with individualized rates, terms and conditions, U.S. carriers are developing more efficient and innovative termination arrangements and improved services to customers. Based on this experience, Petitioners believe that similar benefits would follow from the extension of more flexible commercial arrangements to all U.S. international routes.

B. The ISP Now Imposes Greater Burdens on U.S. Carriers Seeking to Negotiate Lower Rates

While the Commission's elimination of ISP requirements has encouraged the negotiation of lower rates on ISP-exempt routes, the huge expansion of the number of routes exempt from the ISP also has made it even more difficult than before for U.S. carriers to negotiate lower rates on the small number of remaining routes that are still subject to the ISP. In particular, foreign

[10] *ISP Reform Order*, ¶ 28.

[11] *Id.*

carriers on ISP routes are increasingly reluctant to negotiate traffic termination arrangements with symmetrical rates for U.S.-outbound and U.S.-inbound traffic. Because U.S.-inbound traffic is now terminated at market-based rates on ISP-exempt routes, and refile arrangements for U.S.-bound traffic are widely available through ISP-exempt routes, foreign carriers on ISP routes can readily obtain lower refile rates for their U.S.-bound traffic and therefore are unwilling to pay symmetrical inbound rates for this traffic to U.S. carriers.

Similarly, where U.S. carriers negotiate symmetrical rate arrangements with foreign carriers on ISP routes, U.S. carriers may pay higher rates to these ISP route destinations than are paid by third country carriers at the foreign end of ISP-exempt routes. That is because third country carriers on ISP-exempt routes may be able to use their lower rates for U.S.-bound traffic to bargain for lower outbound rates to the ISP route destination. The foreign carriers on ISP-exempt routes may then use those lower outbound rates to compete against U.S. carriers for wholesale traffic to the ISP route destination.

Thus, in the largely deregulated world in which U.S. carriers now compete, rate reductions are much more likely to result from the removal of the ISP on a route than from the continuation of this regulation on the relatively few routes where it still applies. While the Commission retained the ISP on non-benchmark compliant routes in 2004 because of the higher rates and more limited development of market forces on these routes, the burdens resulting from the retention of the ISP now far outweigh the benefits of this policy.[13] Because of the greater

(Footnote continued from previous page)

[12] *Id.*

[13] *Id*, ¶ 36. As the result of these different circumstances, AT&T and Verizon have changed the positions formerly taken on this issue by AT&T's affiliate, AT&T Corp., and by Verizon's affiliate, the former MCI, Inc., and request the Commission extend the benefits of market-based

(Footnote continued on next page)

difficulty of negotiating lower rates on ISP routes, and in light of U.S. carriers' greater experience in the three years since the filing of comments in the *ISP Reform* proceeding with commercial arrangements on ISP-exempt routes, including many routes to non-liberalized countries, compliance with benchmark rates should no longer be required before removing the ISP.

As described below, increased global market pressures since 2004 and the other competitive safeguards and prohibitions on anticompetitive conduct that serve to protect the U.S. market against competitive harm after the removal of the ISP further demonstrate that the benefits from extending flexible arrangements to all international routes now greatly outweigh the considerations that led the Commission to retain the ISP on a limited number of routes in 2004.

II. COMPETITIVE CONCERNS ARE FULLY ADDRESSED THROUGH THE COMMISSION'S COMPETITIVE SAFEGUARDS

The original purpose of the ISP was to address concerns regarding anticompetitive conduct that can now be addressed in a more targeted manner by the competitive safeguard procedures the Commission established in 2004 specifically to prevent competitive harm to U.S. carriers and consumers from the removal of the ISP. As a result, it is no longer necessary to regulate U.S. international routes under the detailed requirements of the ISP. As the Commission found, the safeguard procedures "effectively achieve the same purposes of the ISP to prevent anticompetitive harm without also broadly prohibiting the benefits of more flexible agreements

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arrangements to all routes.

to U.S. competition and U.S. customers."[14] These competitive safeguards can continue to prevent competitive harm to the U.S. market following the removal of the ISP on additional routes.

The safeguards procedures allow action by petition or on the Commission's own motion and provide an expedited comment cycle for carrier petitions "in order to address or avert potential harm to U.S. competition and U.S. customers."[15] Additionally, the Commission is now considering possible improvements in these procedures to provide needed protection against foreign carrier efforts to disrupt U.S. carrier commercial arrangements on ISP-exempt routes by threatening or engaging in circuit disruption.[16]

The Commission is authorized to prevent foreign carriers from harming U.S. competition on all U.S. international routes, including those exempted from the specific requirements of the ISP.[17] The Commission has repeatedly emphasized that its longstanding prohibition on anticompetitive conduct by foreign carriers continues to apply to U.S. international routes that are no longer subject to the ISP.[18] In addition, the "No Special Concessions" rule prohibits

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[14] *Id.*

[15] *Id.*, ¶ 51; *see also*, 47 C.F.R. § 1002(d).

[16] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct*, Notice of Inquiry, IB Docket No. 05-254, rel. Aug. 15, 2005.

[17] *See, e.g., Cable & Wireless P.L.C. v. FCC,* 166 F. 3d 1224 (D.C. Cir. 1999); *Atlantic Tele-Network, Inc.* v. FCC, 59 F. 3d 1384 (D.C. Cir. 1995) (affirming the Commission's broad authority to regulate the U.S. international telecommunications market to promote the public interest); *Mackay Radio & Telegraph Co.*, 2 FCC 592 (1936), *aff'd by the Commission en banc,* 4 FCC 150 (1937), *aff'd sub nom Mackay Radio & Telegraph Co. v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938) (denying Section 214 application with settlement term that would have allowed foreign carrier to "whipsaw" U.S. carriers).

[18] *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 19 FCC Rcd. 9993, ¶ 18, n.64 (2004) ("*Philippines Order On Review*") ("The Commission's policy of protecting the public interest from anticompetitive behavior goes

(Footnote continued on next page)

exclusive arrangements regarding the provisioning and maintenance of international facilities on all routes, including those exempted from the ISP. These well-established rules and policies would continue to prevent the abuse of foreign market power following the further exemption of international routes from the ISP requested here. Lastly, this Petition does not seek to change the Commission's benchmarks policy.

III. THE CONTINUED GROWTH OF COMPETITION IN GLOBAL MARKETS AND INCREASED USE OF LEAST COST ROUTING ARRANGEMENTS ALSO SUPPORT THIS FURTHER DEREGULATORY STEP

An important underpinning of the Commission's deregulatory approach has been the huge growth of global telecommunications competition following the 1997 WTO Basic Telecommunications Agreement and the increasing use of non-traditional international traffic routing and termination arrangements. The Commission emphasized in 2004 that foreign market liberalization and the availability of alternative routing and termination arrangements "reduces our concern" that foreign carriers with market power could harm the U.S. market after the removal of the ISP.[19] The continued growth of global telecommunications competition and the greater availability and usage of alternative international traffic termination arrangements provides additional support for the further removal of the ISP requested here.

The Commission deregulated benchmark compliant routes in 2004 in light of data showing the world-wide market share of non-incumbent carriers to be 31.8 percent in 2002 and

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back over sixty years."); *see also id.* ¶¶ 22, 31; *ISP Reform Order*, ¶ 45. The re-imposition of particular requirements of the ISP may still provide an appropriate remedy in response to actual or threatened market disruption by foreign carriers that seek to increase rates. *See* IB Docket No. 05-254, Comments of AT&T Corp. (filed Oct. 7, 2005) at 19; Comments of MCI, Inc. (filed Oct. 7, 2005) at 13.

[19] *Id*, ¶ 33.

thirty-eight countries to have some competition in their international telecommunications services markets in that year.[20] Additionally, least-cost routing alternatives to traditional settlement arrangements, while not available to all countries at that time and under increasing scrutiny from foreign governments, were apparently exerting "pressures on bilateral settlement rates on many routes to move toward cost."[21] The Commission found that these pro-competitive developments in the international market not only created pressures to reduce termination rates but also helped to address concerns that the removal of the ISP could encourage the abuse of foreign market power.

More recent data demonstrates the continued rapid growth of competition in foreign markets and the use of least cost routing alternatives. According to *TeleGeography 2006*, the world-wide traffic market share of non-incumbent carriers was 41 percent in 2004, and "[b]y 2004, more than 79 countries, accounting for 92 percent of the world's international traffic, had liberalized their international long distance markets."[22] *TeleGeography 2006* also documents the growth in competition that has resulted from VoIP. International VoIP traffic increased by 35 percent in 2004 – three times higher than the growth in switched traffic – and is expected to grow by 38 percent in 2005.[23] This study reports that most VoIP traffic terminates in developing countries, because of the arbitrage opportunities resulting from these countries' higher termination rates, and that the most rapid growth in VoIP traffic of any region has occurred in

[20] *Id.*, ¶ 21 (citing data from *TeleGeography 2004*). *See also, TeleGeography 2004*, International Carriers and Traffic (stating that "[b]y 2002, more than 50 countries, accounting for 90 per cent of the world's telecommunications traffic, has liberalized their international long distance markets").

[21] *Id.*, ¶ 23.

[22] *TeleGeography 2006*, International Carriers and Traffic.

[23] *Id.*, International Voice Carriers and Traffic, VoIP Routes and Traffic.

Africa, where VoIP traffic grew by 65 percent in 2004.[24] In some countries, VoIP now accounts for a majority of incoming international traffic, including Bangladesh, where more than 60 percent of incoming international traffic is VoIP.[25] Even incumbent carriers in developing countries now use VoIP carriers to carry their outbound international calls.[26]

This recent study also confirms the well-established nature of least cost routing arrangements in the global market. In particular, 35 percent of global switched international traffic was sent through wholesale carriers in 2004, and traffic refiled though third countries accounts for between 15 and 20 percent of global traffic. Notably, a significant amount of traffic to developing country destinations, in Africa and elsewhere, is sent as wholesale traffic.[27] Additionally, as the Commission recently described, there is an on-line, real-time spot market for the termination and settlement of international traffic allowing carriers to deliver outbound traffic to New York, Los Angeles, London and Hong Kong for world-wide termination at current market rates.[28]

These pro-competitive pressures are now being felt at least to some extent on virtually all U.S. international routes. This continued growth of global competition helps to address concerns that the further removal of the ISP would lead to the abuse of foreign market power and further demonstrates that more flexible traffic termination arrangements should now be extended to all international routes.

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[24] *Id.*

[25] *Id.*

[26] *Id.*, International Voice Carriers and Traffic, Traffic Analysis.

[27] *Id.*, Fig. 7.

[28] *Verizon Commmunications, Inc. and MCI, Inc.*, WC Dkt. No. 05-75, Memorandum Opinion and Order, rel. Nov. 17, 2005, FCC 05-184, ¶ 166. *See also*, www.arbinet.com.

For the reasons set forth above, AT&T, Sprint and Verizon ask the Commission to commence a rulemaking to remove the ISP from all remaining U.S. international routes.

Respectfully submitted,

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March 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 2006, I caused true and correct copies of the foregoing Joint Petition For Rulemaking of AT&T Inc., Sprint Nextel Corporation and Verizon to be delivered by electronic mail to the individuals listed on the attached service list.

Dated: March 13, 2006

/s/ James J.R. Talbot
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